



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

40141

B-179052

October 29, 1973

Charles J. Dispanza & Associates  
Box 9  
Cohocton, New York 14026

Attention: Mr. Charles J. Dispanza

Gentlemen:

We refer to your letter dated July 4, 1973, and previous correspondence, in which you protest the award of a contract to American Laundry Machinery Industries (ALMI) pursuant to invitation for bids (IFB) No. M2-72-73, issued on May 22, 1973, by the Veterans Administration Marketing Center, Hines, Illinois.

The IFB solicited bids on three items as follows:

<u>Item No.</u>	<u>Item</u>	<u>Quantity</u>
1	Garment finisher	1
2	Tumbler, drying and conditioning	2
3	Lint collector	1

Bids received on June 20, 1973, pertinent to consideration of your protest, were as follows:

<u>Item No.</u>	<u>ALMI</u>	<u>Dispanza</u>	<u>Colmac</u>	<u>ECI</u>
1	\$ 7,955.00	\$ 7,777.00	\$6,638.06	No bid
2	39,146.00	38,118.00	No bid	No bid
3	6,126.00	8,956.00	No bid	\$8,905.00

You further submitted lump-sum bids of \$46,864 for items 2 and 3 and \$54,242 for items 1, 2, and 3, and offered a 1 percent prompt payment discount. Both you and ALMI qualified your bids by refusing to accept an award for item 3 as a separate item.

The contracting officer awarded item 1 to Colmac and items 2 and 3 to ALMI. You protest the award to ALMI on the grounds that awards should have been made on an item-by-item basis and, since you were the low bidder on item 2, you should have received the award for item 2.

[Protest of VA Contract Award]

7/8/73

09/821

Page 3 of the IFB contains a provision incorporating Standard Form 33A (Solicitation Instructions and Conditions, March 1969) into the IFB by reference. Standard Form 33A provides in pertinent part as follows:

"10. AWARD OF CONTRACT. (a) The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered."

\* \* \* \* \*

"(c) The Government may accept any item or group of items of any offer, unless the offeror qualifies his offer by specific limitations."

It is well established that, under a provision such as 10(c) above, and where there is nothing else in the IFB to the contrary, it is properly within the discretion of the contracting officer to make awards to one or more bidders, whichever is most advantageous to the Government. See 41 Comp. Gen. 721 (1962); B-174381, November 26, 1971; B-173907(1), December 22, 1971.

Assuming item 1 would be awarded to Colmac in any event, and you do not dispute this, an item-by-item award such as you suggest would have resulted in a total price to the Government for items 2 and 3 as follows:

Item 2: C. J. DiIpenza	\$38,118
Item 3: ALXI	8,905
	<u>\$47,023</u>

Since, under the above-cited provisions of Standard Form 33A, a bidder could properly qualify his bid by refusing to accept an award for item 3 unless also awarded item 2, the contracting officer could properly consider such qualification in determining the award or awards which would be most advantageous to the Government. An award of items 2 and 3 to you, considering both your lump-sum offer and prompt payment discount, would have resulted in a total price of \$46,395.36 for those items. The award of both items to ALXI resulted in a total price for items 2 and 3 of \$45,272. The contracting officer thus found that the award of items 2 and 3 to ALXI would result in the lowest total price and would therefore be most advantageous to the Government. Under the decisions cited above, there is no legal basis to question that determination.

B-179032

You correctly state that you could have omitted a bid for item 3. However, as illustrated above, this still would not have compelled an award to you on item 2.

Your contention that "no one wants the 1st trap [Item 3] by itself, since there is really no profit in it" supports a combined award for items 2 and 3. To require item-by-item awards under such circumstances would not be advantageous to the Government since there would be no incentive for a bidder to submit his lowest possible bid on item 3, thereby discouraging rather than encouraging competition.

For the reasons discussed above, your protest must be denied.

Sincerely yours,

Paul G. Denbling

For the: Comptroller General  
of the United States